held that that was negligence, it does not prevent her from recovering unless it was the decisive cause of the accident. I have no hesitation in holding that the decisive cause of the accident in this case was the driving of the two vehicles too close together as they passed each other and therefore, even if the plaintiff was negligent in allowing her arm to project slightly outside the vehicle, that fact would not, in my view, prevent her from recovering damages.

11. I have been referred to the case of *Simon v. The London General Omnibus Coy.*[7] in which the plaintiff whose arm was projecting over the brass rail of the bus failed to recover damages, but as I understand that case the ratio decidendi was not that the plaintiff was himself negligent but that it had not been proved that the bus driver was negligent. That case was followed by another, that of *Hase v. The London General Omnibus Coy.*[3] in which the plaintiff failed to secure damages and in that case the projection which caused the injuries was of such a construction that although the plaintiff was properly seated in his seat he was injured. So it is impossible to say that *Simon v. The London General Omnibus Coy.*[7] is an authority for the proposition that you would fail to secure damages if your arm is projecting over the side of the bus. The basis of the decision, as I have said, was something quite different.

12. I find then that the plaintiff has proved negligence against the two defendants and that she is entitled to recover damages against them. She has given particulars of her special damages. I take them item by item. I propose to award her as follows:—

Under "hospital charges" the amount claimed	$ 5.50
Under General Hospital	$ 0.20
Under Ricksha hire	$ 9.70
On the question of wages for the nurse I am prepared to accept her statement that she employed some one to assist her when she had recently lost her arm and asked someone to help her as she could not fend for herself. I think the sum of $50.00 would cover any reasonable expense under that head	$50.00
Extra nourishment—I think $20.00 is abundant	$20.00
Clothes spoiled—I suggest $10.00	$10.00
Loss of profits on business is difficult to calculate but I think the sum of $75.00 is sufficient under that head	$75.00

Then I come to the question of the loss of her arm and her pain and suffering in connection therewith. I agree with the learned counsel for the defence that the good lady under-estimated her age, but at the same time she is a healthy strong woman and should have many years of life before her. I know that in the case above referred to Laville, J. awarded $2,000.00 but that was to a young girl, an actress in a theatrical company or something of that sort. At any rate I think that that sum would be much too high in the present case, but that the sum of $750.00 would be a fair amount. I therefore award the plaintiff against the two defendants the sums that I have enumerated above (totalling in all $920.40) and the taxed costs of this action.

Judgment for the plaintiff.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

August 29, 1940.

FUAN AH POCK ALIAS PHOA AH HOK v. REX.

[SINGAPORE MAGISTRATE'S APPEAL No. 75 of 1940]

Evidence Ordinance S. 115—Corroboration of child's evidence required.

The unsworn evidence of a child requires corroboration in a similar manner to the evidence of an accomplice. Although a Magistrate does not expressly state in his judgment that he has directed his mind to the consideration of this legal principle, still if he has in fact done so that is sufficient even though it is not specifically referred to in his ground of judgment.

The decision of the Johore Court of Appeal in **Lee Mion v. P. P. of Johore**[2] followed.

Cases referred to:—

(1) *Rex v. Koh Soon Poh*, 4 M.L.J. 120.

(2) *Lee Mion v. P. P. of Johore*, 3 M.L.J. 124.

(3) *White v. P. P. of Kedah*, Kedah Criminal Appeal No. 5 of 1359 (27th June, 1940) not yet reported.

APPEAL.

H. S. Cheah for the appellant.

C. H. Koh (D.P.P.) for the Crown.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, Ag. C.J.—This was an appeal by Fuan Ah Pock against his conviction by the Second Magistrate on a charge of theft. The evidence for the prosecution, anyway so far as the identification of the accused was concerned, rested on the evidence of Mun Chiok Hai, a boy 10 years of age.

It was argued on the appeal that there were so many improbabilities and inconsistencies in the case for

the prosecution that it was not safe to convict. These, however, are all questions of fact and an appellate Court rarely interferes with the findings of the Magistrate who heard the witnesses. The learned Magistrate accepted Mun Chiok Hai as a witness of truth, and unless there is some principle of law which should have prevented the acceptance of his evidence without corroboration, the accused was clearly guilty of the offence charged.

It is true that the witness made certain statements to one Choy Ah Kiew, a maidservant in the house, which confirm his evidence in various important particulars, although not as to the identity of the accused. Under section 157 of the Evidence Ordinance such statements are treated as corroboration of a witness (see *Rex v. Koh Soon Poh,*[1] but such corroborative evidence standing by itself is not usually regarded as sufficient corroboration of an accomplice within the meaning of section 115 illustration (b) of the Evidence Ordinance. For the purpose of this appeal the evidence of Mun Chiok Hai must be regarded as uncorroborated.

Although there is not in Malaya as in England any statutory provision that the unsworn evidence of a child of tender years must be corroborated by some other material evidence implicating the accused, I accept the ruling of the Johore Court of Appeal (Sir Walter Huggard, C.J., S.S. and Gerathy, J.) in *Lee Mion v. P. P. of Johore,*[2] that the principle of requiring corroboration in the case of an accomplice is equally applicable where the conviction depends on the unsworn evidence of a child. Now under section 134 of the Evidence Ordinance an accomplice is a competent witness, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. It is, however, an established rule of practice that in trials before a jury or assessors the danger of accepting such evidence must be clearly put by the trial Judge. The same principles should be applied in accepting the evidence of a child of tender years.

In a trial before a Magistrate it often happens that there is nothing in the record to show that in considering the evidence the Magistrate has directed himself to the rules of evidence with which he can be presumed to be familiar. In the Johore case the Court ruled that it could not be assumed that the trial Judge (sitting without assessors) had directed his mind to the danger of accepting the uncorroborated testimony of a child witness when there was nothing in the record to indicate that he had done so.

I think it is obvious that this principle may easily be carried too far. It might be argued, for instance, that because there was nothing in the record to show that the Magistrate appreciated that the burden of establishing their case was on the prosecution, he might have misdirected himself on this point, or that, in the case of a prosecution under section 304 (A) of the Penal Code, he did not appreciate that a high degree of negligence must be established. If that were the law no conviction would stand, and for the future every judgment would have to be prefaced by a statement that the Magistrate was familiar with the law and the rules of evidence applicable to the case, and had carefully considered them in arriving at his decision. I find myself, therefore, unable to agree with the ruling of Aitken, J. in *White v. P. P. of Kedah,*[3] where he held that the conviction under section 304A of the Penal Code must be set aside because the Magistrate had not specifically stated that the principle that a high degree of negligence was necessary to justify a conviction was present in his mind.

So far as concerns the question of corroboration I think that any indication on the record that the point had been raised should be sufficient to satisfy an appellate Court that the Magistrate fully appreciated that corroboration was normally required. There is a suggestion in the judgment of Gerahty, J. in the Johore case that any such indication in the address of counsel might be sufficient. As I find that the Johore case was cited by learned counsel in the Court below at the close of the prosecution case, I feel no doubt that the point was present in the learned Magistrate's mind, even though it is not specifically referred to in his grounds of judgment.

I find, therefore, that this ground of appeal also fails. The appeal will therefore be dismissed.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

September 5, 1940.

MAHMOOD BIN MOHAMED SHAFI v. REX.

[SINGAPORE MAGISTRATE'S APPEAL No. 77 of 1940]

Corroboration of witness of tender years by witness of tender years.

Just as by rule of law one accomplice cannot corroborate another so one witness of tender years cannot corroborate another witness of tender years. A magistrate fully cognisant of the danger of accepting uncorroborated evidence may nevertheless do so but he must deliberately accept the evidence of the witness without corroboration and must direct his mind to the danger of doing so.